

**\*\*NOT FOR PRINTED PUBLICATION\*\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

UNITED STATES OF AMERICA,	§	
	§	
<i>Plaintiff,</i>	§	
	§	CIVIL ACTION No. 1:10CV240
v.	§	
	§	
JAMES A. SMITH ET AL.,	§	JUDGE RON CLARK
	§	
<i>Intervenor Plaintiffs,</i>	§	
	§	
v.	§	
	§	
WILHELMSSEN SHIPS SERVICE, INC.,	§	
	§	
<i>Claimant,</i>	§	
	§	
v.	§	
	§	
SS CAPTAIN H.A. DOWNING, O.N.	§	
1046031, its boilers, engines, machinery,	§	
masts, spars, rigging, boats, anchors, cables,	§	
chains, tackle, tools, bunkers, pumps and	§	
pumping equipment, apparel, furniture,	§	
fittings and equipment, spare parts, and all	§	
other appurtenances, etc., in rem; and AHL	§	
SHIPPING COMPANY, in personam,	§	
	§	
<i>Defendants.</i>	§	
	§	

**FINAL JUDGMENT**

Pursuant to Rule 58 of the Federal Rules of Civil Procedure, and in accordance with the court's order issued from the bench on October 7, 2011:

It is hereby **ORDERED** that the Maritime Administration of the Department of Transportation as substitute custodian of the SS CAPTAIN H.A. DOWNING shall recover from the proceeds from the sale of the vessel, which are currently located in the court registry the amount of:

Four-hundred eighty-seven thousand, two-hundred ninety-five dollars and forty-six cents (\$487,295.46) as custodia legis expenses in securing keeping, and insuring the vessel.

It is further **ORDERED** that the United States Marshal's Service shall recover from the proceeds from the sale of the vessel, which are currently located in the court registry the amount of:

Two-hundred one dollars and fifty cents (\$201.50) as an administrative expense incurred in serving papers required to complete the arrest and sale of the vessel.

It is further **ORDERED** that Intervenor Captain Timothy A. Brown as Chairman of the Board of Trustees of the Masters, Mates, & Pilots Vacation Plan, shall recover as preferred seamen wages from the proceeds of the sale of the vessel, which are currently located in the court registry, the following amounts:

Thirty-one thousand, seven hundred forty-seven dollars and fifty-nine cents (\$31,747.59) in vacation wages which he shall cause to be paid to the individual crew members named and in the amounts listed on page one of exhibit 3 which is attached to this Judgment; together with

Two-thousand, four-hundred twenty-eight dollars and thirty-nine cents (\$2,428.39) in FICA Tax to be paid to the Internal Revenue Service on behalf of each crew member

listed on page one of exhibit 3 as taxes on paid contributions these crew members received in this Judgment; together with

Pre-judgment interest from October 20, 2011 to December 1, 2011, the date of final judgment, at the prime rate (3.25%) , compounded quarterly in the amount of One-hundred thirty-four dollars and forty cents ( \$134.40)

For a total sum paid to Captain Timothy A. Brown on behalf of the crew members listed on page 1 of exhibit 3 of Thirty-six thousand one-hundred twenty eight dollars and ninety eight cents (\$36,128.98)

It is further **ORDERED** that Intervenor Plaintiff James A. Smith shall recover from the proceeds from the SS CAPTAIN H.A. DOWNING, which are currently located in the court registry in the amount of:

1. Two-thousand, nine-hundred twenty dollars (\$2,920) in maintenance; together with
2. Five-thousand, one-hundred dollars (\$5,100) in past unpaid medical expenses; together with
3. One-hundred twelve-thousand five-hundred dollars (\$112,500) in past pain and suffering; together with
4. Seventy-five thousand dollars (\$75,000) in future pain and suffering; together with
5. Seventy-eight thousand, two-hundred ninety dollars and twenty-five cents (78,290.25) in loss of past earnings; together with
6. One-hundred thirty-four thousand, three-hundred ninety nine dollars and twenty-five cents (\$134,399.25) in loss of future earning capacity; together with
7. Pre-judgment interest from January 18, 2009 to December 1, 2011, the date of final judgment, at the prime rate (3.25%), compounded quarterly in the amount of

Thirty-nine thousand, five-hundred fifty three dollars and twenty cents  
(\$39,553.20)

For a total sum to James A. Smith in the amount of four-hundred forty-seven thousand,  
seven-hundred sixty-two dollars and seventy cents (\$447,762.70)

It is further **ORDERED** that Plaintiff the United States of America shall recover in  
partial payment of their preferred ship mortgage from the proceeds from the sale of the SS  
CAPTAIN H.A. DOWNING located in the court registry the amount of: Two million, two-  
hundred seventy-seven thousand, six-hundred nine-teen dollars and fifty-seven cents  
(\$2,277,619.57)

It is further **ORDERED** that pursuant to the court's order granting in part Plaintiff  
United States of America's Motion for Default Judgment [Doc. # 97 ], a default judgment is  
entered against all persons claiming maritime liens against the SS CAPTAIN H.A. DOWNING  
except the United States, Captain Timothy A. Brown, James A. Smith, and Wilhemsen Ship  
Service, Inc.

It is further **ORDERED** that all relief not specifically granted herein is **DENIED**. All  
pending motions not previously ruled on are **DENIED**. This is a final judgment and is  
appealable.

So **ORDERED** and **SIGNED** this **1** day of **December, 2011**.



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Ron Clark, United States District Judge

Exhibit 3

## Captain H.A. Downing

LAST NAME	SSN	RATING	March 2010 VACATION	April 2010 VACATION	Vacation Benefit	Employer Payroll FICA Tax
Mignano	XXX-XX-2127	Master	\$2,680.83	---	\$ 2,512.61	\$192.21
Hilley	XXX-XX-2233	Chief Engineer	\$8,797.80	\$3,973.20	\$11,972.56	\$915.90
Dawson	XXX-XX-3144	2 <sup>nd</sup> Engineer	\$3,601.89	\$1,626.66	\$ 4,860.71	\$371.84
Dials	XXX-XX-0120	Bosun	\$1,410.32	\$1,161.44	\$ 2,374.85	\$181.68
Noonan	XXX-XX-2283	Bosun	\$1,161.44	---	\$ 1,149.12	\$ 87.61
Fortes	XXX-XX-4221	AB	\$1,984.93	\$ 896.42	\$ 2,639.67	\$201.93
Archaga	XXX-XX-9827	Pumpman	\$2,345.46	\$ 378.30	\$ 2,495.23	\$190.89
Armour	XXX-XX-1712	Pumpman	---	\$ 680.94	\$ 623.78	\$ 47.72
Withers	XXX-XX-6301	Steward/Cook	\$2,345.46	\$1,059.24	\$ 3,119.04	\$238.61
		<b>TOTALS</b>	\$24,328.13	\$9,776.20	\$31,747.59	\$2,428.39
		<b>GRAND TOTAL</b>	<b>\$34,104.33</b>		<b>\$34,175.98</b>	